UNITED NATIONS

SECRETARIAT

ST

Distr.
GENERAL

ST/SOA/118/Add.2
6 February 1973

ORIGINAL: ENGLISH/FRENCH

CAPITAL PUNISHMENT

Information from Governments compiled by the United Nations Secretariat

Addendum

INFORMATION RECEIVED FROM GOVERNMENTS (continued)

Czechoslovakia

/Original: English/
/6 December 1972/

1. (a) Criminal proceedings against an offender accused of a penal act for which the Penal Code in its Special Part prescribes death penalty are of an ordinary character and are conducted, as provided by the Code of Penal Procedure, in the same manner as against offenders who committed other criminal acts. The perpetrator of a crime punishable by death penalty thus enjoys the same rights and guarantees as those accorded under the Code of Penal Procedure to any other offender.

Under section 36, paragraph 3, of the Code of Penal Procedure, the accused in penal proceedings concerning an act punishable by death penalty must have counsel already in the preparatory proceedings regardless of his property situation. If the accused does not make use of the right to choose his counsel, a counsel is appointed for him. If the accused is sentenced to death penalty, his right to submit an appeal or a petition for pardon is not limited in any way in comparison to other convicts.

All judgements imposing the death penalty shall be reviewed by the Supreme Court of the Czechoslovak Socialist Republic from the point of view of the legality of the judgement and the proceedings which had preceded it. If it finds that the law was violated in a manner which could have affected the imposition of the death penalty, it shall proceed as if a complaint against violation of the law had been filed, i.e., in its decision it shall pronounce that the law had been violated and that the judgement imposing the death penalty, or the proceedings preceding it, are cancelled and that it orders new proceedings.

The death penalty may be executed only if the judgement has been unaffected by the review carried out by the Supreme Court of the Czechoslovak Socialist Republic and the court has been advised that there has been no petition for pardon or that such petition has been rejected.

(b) Although there is no provision in the Czechoslovak legal regulations regarding the time limit within which the death penalty could be executed, there in fact exists time difference between the date on which the judgement becomes effective and the date of the execution of the death penalty. This is given by the period of time which is necessary for the review by the Supreme Court of the Czechoslovak Socialist Republic of the judgement imposing the death penalty, as stated in paragraph (a) of this information. Since the application of the existing legal guarantees always requires a certain period of time, we do not regard as necessary and purposeful to prescribe a time limit before the expiry of which the death penalty could not be executed.

2. The death penalty is expressly defined by the law as an extraordinary penalty. Possibilities for its imposition are very limited. Its imposition is possible only in respect of crimes for which the Penal Code allows the death penalty and only in cases where the degree of danger of such crime to the society is too high, where the imposition of the penalty is required for the effective protection of the society, or if there is no hope that the offender can be educationally affected by another penalty. There are 29 criminal acts for which the death penalty can be imposed. From these, 13 are military crimes for which the imposition of the death penalty comes into consideration mainly under the condition that they were committed in a state of defence emergency or in battle. In four cases they are the crimes against humanity.

The number of crimes committed in times of peace for which the death penalty can be imposed is very small. Its imposition comes quite rarely and practically only in cases of brutal murders. The Penal Code does not prescribe for any of the crimes capital punishment as the only penalty so that the court can choose between the death penalty or a long-term imprisonment.

The death penalty may in no case be imposed on a pregnant woman or a juvenile, that is a person who was not older than 18 years when he committed the crime.

Finland

/Original: English/
/18 January 1973/
Additional reply

A declaration given in 1826 de facto abolished the execution of capital punishment in Finland. Since then, death sentences have not been executed in peace time. By an Act on the deletion of capital punishment from the penal system No. 343/72, of 5 May 1972, which came into force on 1 June 1972, the death penalty was deleted from the Finnish legislation concerning both peace and war-time and substituted by the penalty of hard labour for life.

Tunisia

/Original: French/
/27 November 1972/

Le Code de procédure pénal tunisien accorde dans les différentes phases de la procédure, des garanties aux accusés d'un crime passible de la peine capitale. C'est ainsi que lors d'une première comparution, le juge d'instruction doit, après avoir constaté l'identité de l'inculpé, lui faire connaître les faits qui lui sont imputés ainsi que les textes de loi applicables à ces faits, et recevoir ses déclarations (art. 69 du Code précité).

De même, le juge d'instruction doit donner avis à l'inculpé (garantie capitale) de son droit de choisir un conseil parmi les avocats inscrits au tableau ou admis en stage. A défaut de choix, un conseil doit lui être désigné d'office. La désignation est faite par le Président du Tribunal (art. 69).

L'inculpé peut également communiquer librement avec son Conseil dès après la première comparution (art. 70).

En outre, tout inculpé de crime ne peut être renvoyé devant le tribunal criminel que par la chambre d'accusation qui est une juridiction d'instruction de second degré. C'est en effet l'arrêt de renvoi de ladite juridiction qui fait de l'inculpé un "accusé" (art. 119). Devant la Cour criminelle, l'assistance de l'avocat est également obligatoire. Si l'accusé ne choisit pas un avocat, le Président lui en désigne un d'office (art. 141).

Si en principe, les jugements sont rendus à la majorité des voix, la condamnation à la peine capitale ou aux travaux forcés à perpétuité est, aux termes de l'article 162, prononcée par quatre voix au moins. Il est à noter que la Cour criminelle se compose de cinq magistrats, le président compris.

Le Code précité prévoit également qu'aucun individu condamné à mort ne peut être privé du droit de former un recours devant une instance judiciaire supérieure ou de demander sa grâce. En effet, d'après les articles 258 - 261 - 162 et 163, tout condamné à mort peut se pourvoir en cassation dans un délai de cinq jours à dater de la décision contradictoire. Le pourvoi est formé par simple requête. Il est jugé par ladite Cour toutes affaires cessantes.

Le condamné à mort est dispensé de la consignation de l'amende à laquelle il serait condamné si sa requête était rejetée.

Quant au droit de grâce, l'article 342 dispose que lorsque la peine prononcée est la mort, la décision dès qu'elle est devenue définitive est portée à la connaissance du Ministre de la justice qui la soumet au Président de la République pour l'exercice de son droit de grâce. La condamnation ne peut être mise en exécution que lorsque la grâce a été refusée.

Il convient également de signaler qu'en matière d'exécution, le Code pénal tunisien prévoit dans son article 9 que la femme condamnée à mort, qui est reconnue enceinte ne subit sa peine qu'après délivrance.

/...

Enfin, s'agissant de l'abolition de la peine capitale, il ne paraît pas possible, en l'état actuel de la législation tunisienne, de consacrer un tel principe. Toutefois, la Tunisie ne manquera pas d'étudier avec atttention les propositions et suggestions qui seront faites par les Nations Unies à ce sujet.

Zambia

[Original: English]
[13 December 1972]

A...

(i) A person condemned to death in Zambia is not deprived of the right to appeal to the Court of Appeal and whether a condemned person petitions for pardon or not, a death warrant is not signed by His Excellency the President unless the Advisory Committee on the Prerogative of Mercy has met, reviewed the case and made recommendations to His Excellency the President as to whether a person should be hanged or not.

(ii) A death sentence in Zambia is not carried out unless the procedures of appeal and a review by the Advisory Committee on the Prerogative of Mercy have been terminated.

The procedure is as follows:

(a) At the trial of a person for a capital offence, such person must be legally represented and is always legally represented.

(b) If the prisoner is sentenced to death by the High Court, he always appeals to the Court of Appeals, and the appeal is presented by a legal representative.

(c) If the Court of Appeal dismisses the appeal and confirms the death sentence, then automatically the Advisory Committee on the Prerogative of Mercy under section 55 (4) of the Constitution of Zambia, reviews the whole case and advises His Excellency the President whether the death warrant should be signed or not, and whether the prisoner should be granted a pardon or reprieve.

(iii) No person may be tried on a charge of murder or manslaughter without legal representation.

B. In Zambia there are adequate legal procedures and safeguards, so that fixing a time-limit before the expiry of which the death sentence should be carried out would serve no useful purpose.

It is not intended to restrict the use of the death penalty or to abolish it, and no changes have taken place in this direction since 1965.

UNITED NATIONS

SECRETARIAT

ST

Distr.
GENERAL

ST/SOA/118/Add.3
8 May 1973

ORIGINAL: ENGLISH/FRENCH

CAPITAL PUNISHMENT

Information from Governments compiled by the United Nations Secretariat

Addendum

INFORMATION RECEIVED FROM GOVERNMENTS

Botswana

[Original: English]
[7 March 1973]

In the Republic of Botswana, where a person is charged with murder which by law carries a death sentence, such a person, if he is unable himself, is automatically entitled to a legal counsel who is provided and paid by the State. Murder cases are tried by the High Court and in the event of conviction there is an automatic right of appeal to the Court of Appeals.

Where the Court of Appeals upholds the death sentence, the sentence shall not be carried out until the case is reported to the President of the Republic to enable him, if he deems fit, to exercise the prerogative of mercy. In exercising this function, the President is assisted by the Advisory Council of the Prerogative of Mercy. There is thus adequate safeguard for persons who are condemned to death.

Ivory Coast

[Original: French]
[22 February 1973]

Depuis son accession à l'indépendance, la Côte d'Ivoire n'a procédé à l'exécution d'aucune peine capitale.

La procédure pénale en vigueur en Côte d'Ivoire prévoit:

1. Un recours devant la Cour Suprême contre l'arrêt de la Cour d'assisses ayant prononcé la condamnation à mort ou un recours en grâce devant le Chef de l'Etat qui se prononce après avis de la Commission Supérieure des grâces.

2. Ces recours sont suspensifs.

3. La décision de condamnation ne peut intervenir qu'après un débat judiciaire au cours duquel l'accusé à eu tout loisir de se défendre soit par ses propres moyens, soit lorsqu'il s'agit d'un indigent, avec l'assistance d'un Conseil désigné d'office.

Laos

[Original: French]
[13 February 1973]

L'article II du Code Pénal Lao, modifié par l'Ordonnance Loi No. 237 du 12 août 1965 stipule:

"Qu'aucune exécution capitale ne pourra avoir lieu toutefois qu'après l'approbation de la condamnation par le Roi."

Il en résulte que tout arrêt de condamnation à mort ainsi que le dossier de l'affaire doivent être soumis à sa Majesté le Roi qui exerce souverainement son droit de grâce et de commutation des peines.

Cette procédure n'entraîne aucun frais pour le condamné.

Malaysia

[Original: English]
[8 February 1973]

Legal safeguards

Whilst the death sentence may still be retained in Malaysia, it exists only for the gravest offences like murder and treason. Malaysia is aware of the present trend towards the restriction or total abolition of the death penalty in other countries; but it is not possible to completely do away with the death penalty for a number of reasons - one of which is the question of a suitable alternative penalty for the offence.

However, the sharp drop in the death sentence carried out over the last half-decade as compared to the five years preceding that reflects clearly that the Courts have exercised their discretion in favour of a non-death sentence and that many have received pardons.

Apart from this practice by the courts the law has built into its criminal justice system legal safeguards as are described below for the person charged with a capital offence.

/...

(i) Right to appeal and to pardon

The right to appeal is accorded to the accused by filing a notice of appeal within the prescribed period.

Where notice of appeal is not so filed then the Judge passing the sentence shall submit the notes and recommendations in connexion with the proceedings to the Menteri Besar who shall in turn communicate the matter to the Ruler who will make such order as he thinks fit which may be a pardon or commutation of sentence or if execution then the time and place of execution.

The provision governing the execution of sentences is s.281 of the Criminal Procedure Code (F.M.S.Cap.6). The relevant part reads:

281. With regard to sentences of death the following provisions shall be followed.

(a) After sentence has been pronounced a warrant, under the seal of the Court, shall be made out for the commitment of the person sentenced to the custody of the officer in charge of the district prison, and such warrant shall be full authority to the said officer, or any officer appointed by him for that purpose, for receiving into his custody and detaining the person so sentenced until the further warrant or order of the Court,

(b) (i) In cases in which notice of appeal is not given within the prescribed period, the Judge passing sentence of death shall, as soon as conveniently may be after such period has elapsed, forward to the Menteri Besar of the State in which the crime was committed, a copy of the notes of evidence taken on the trial, together with a report in writing signed by him, setting out his opinion whether there are any reasons, and, if any, what reasons there are, why the sentence of death should or should not be carried out;

(ii) In cases in which notice of appeal is given the Judge who passed sentence of death shall, as soon as conveniently may be, forward to the Federal Court the report in writing referred to in clause (i) of this paragraph; and, if the Federal Court dismisses the appeal, the Judge presiding in such Court shall as soon as conveniently may be after such dismissal forward to the aforesaid Menteri Besar the said report in writing together with a copy of the notes of evidence taken at the original trial, a copy of the record of the proceedings before the Federal Court and also such report, if any, on the case as the Federal Court may think fit to make signed by the Judge presiding in the Federal Court;

(c) The Menteri Besar shall, upon receipt of the proceedings, submit the same to the Ruler of the State and shall communicate to the Court of the Judge passing sentence a copy under his hand and seal of any order the Ruler of the State may, acting in accordance with the provisions of Article 42 of the Constitution, make thereon, shall state the place where the execution is to be held, and if the sentence is commuted into any other punishment shall so state; and if the person sentenced is pardoned shall so state;

(d) (i) On receiving the copy of the said order the Court shall cause the effect of the same to be entered in the records of the Court, and the said order directs the sentence to be carried out shall appoint the time when it is to be carried out and shall endorse the time so appointed upon the said order, and shall in all cases cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary;

(ii) The Ruler of the State acting in accordance with the provisions of article 42 of the Constitution may order a respite of the execution of the warrant and afterwards appoint some other time or other place for its execution;

(iii) The warrant shall be directed to the officer in charge of the prison for the district where the sentence is to be carried into effect, who shall carry the sentence into effect, in accordance with law;

(ii) Right to counsel

Counsel is assigned to each and every accused in a capital case, and at all stages of the proceedings. In ordinary law and special law an experienced lawyer is assigned by the high court and in court martial the accused may have a lawyer of his own choice.

(iii) Time-limit as the execution of death sentence

Although no time-limit is fixed, s.281(CPC) clearly indicates that the execution must be at a time and place fixed by the Order of the Yang Dipertuan Agung or Ruler or Governor of a State, after the case has been referred to him.

Attitude to possible further restriction of the sentence of death penalty

Malaysia is keeping an open mind about the death penalty. The present trend in court practice shows that Malaysia may do away with the death penalty when circumstances permit.

Union of Soviet Socialist Republics

[Original: Russian]
[28 March 1973]

In cases involving crimes for which an exceptional penalty may be applied, the court holds a preliminary hearing at which, without prejudging the question of guilt, it decides whether the case should go to trial, be referred for further investigation or be dropped and also rules on the question of remain in custody.

The legal requirement of a preliminary hearing is an important means of ensuring that the accused is ordered to stand trial only when such action is warranted.

/...

Soviet law not only enables defence counsel to participate in any criminal proceedings but requires him to participate in certain types of cases, including those involving crimes for which the death penalty may be imposed. If defence counsel is not appointed by the accused, his legal representative or some other person acting on his instructions, the investigating officer, the public prosecutor or the court must ensure participation by counsel in the case regardless of the ability of the accused to pay for the services of a lawyer.

A decision of a regional or territorial court or of the Supreme Court of an Autonomous Republic imposing an exceptional penalty may be appealed by the defendant, his counsel or his legal representative and also by the injured party. The public prosecutor is required to file an appeal against any illegal or unjustified sentence. Such appeals must be heard by a higher court.

Any appeal against a sentence stays execution of the sentence.

If the higher court lets the sentence stand, the sentence is considered to have become final.

However, the legislation of the USSR and the Union Republics permits the public prosecutor, the President of the court and their deputies to petition for judicial review of even a final sentence on the grounds of procedural irregularity or the discovery of new evidence. They may, in such cases, stay execution of the sentence until it has been reviewed.

Any convicted defendant may petition for a pardon, in which case the sentence may not be executed until his petition is heard.

The question of the applicability of statutory limitations in cases involving crimes for which the law permits imposition of the death penalty is decided by the court. If the court finds that statutory limitations do not apply, a term of imprisonment must be imposed in place of the death penalty.

The Decision of 30 June 1969 of the Plenum of the Supreme Court of the USSR concerning judicial sentences provides courts with the following guideline: "In deciding whether to impose an exceptional penalty - the death penalty - courts must bear in mind that the imposition of such penalties in the cases provided for by law is permissible only when it is necessary because of special aggravating circumstances in connexion with the crime and because the defendant presents an extreme danger to society."